

REMARKS

In response to the Office Action dated August 24, 2009, Applicants respectfully request that the Examiner reconsider the above-captioned patent application in view of the following comments. Claims 1–7, 16, 21, 50–53, 70–72 and 75–97 are pending. No new matter has been added.

The Office Action dated August 24, 2009 is summarized as follows:

CLAIM NOS.	DISPOSITION/REJECTION		
	BASIS	PRIMARY REFERENCE	SECONDARY REFERENCE(S)
1–4, 70–72, and 75–97	103(a)	Desinger, U.S. Pat. No. 6,723,094 (“Desinger”)	Navarro <i>et al.</i> , U.S. Pat. No. 6,398,777 (“Navarro”)
5–7, 16, and 21	103(a)	Desinger	Navarro and Makower <i>et al.</i> , U.S. Pat. No. 6,190,353 (“Makower”)
50–53	103(a)	Desinger	Navarro and Makower

The Desinger Reference

The Office Action dated August 24, 2009 (“the Office Action”) relies exclusively on 35 U.S.C. § 103(a) to reject all the pending claims; for each of these rejections, Desinger is used as the primary reference. Desinger teaches a device for insertion into “thin-walled regions of the body, for example in the nasal concha¹ for therapy of concha hyperplasia.”² Desinger, col. 3:34–37.

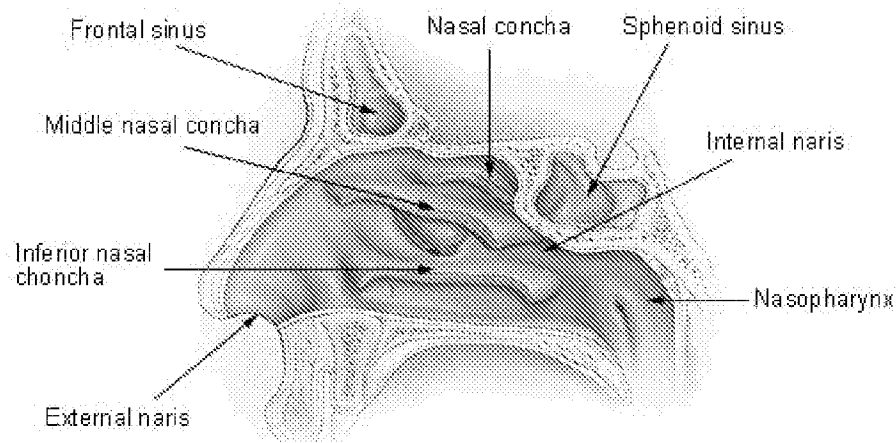
The nasal anatomy is illustrated below in this public domain image from Wikipedia:

¹ “The nasal concha makes up the nasal cavities’ upper chambers. It consists of several scroll-shaped, thin bony elements [that project] from the nasal cavity’s lateral wall. This nasal structure consists of the medial, inferior, supreme, and superior turbinates. ... This nasal structure provides humidification and rapid warming of air as it travels to the lungs. It does this because this structure increases the nasal cavities’ surface area.”

See <http://www.brighthub.com/science/medical/articles/57413.aspx>

² “Nasal concha hyperplasia is a condition in which the number of normal cells in this structure increase. This can lead to growths, or an enlargement or thickening of this nasal structure. This condition can be treated with certain medications or surgery.” *Id.*

Nose and Nasal Cavities



See http://en.wikipedia.org/wiki/File:Illu_nose_nasal_cavities.jpg.

Desinger emphasizes that these nasal regions are examples of “*thin-walled* bodies,” which allows a doctor performing a treatment to “always *see[] directly* with his own eyes that location at which coagulation is taking place.” Desinger, col. 3:67–4:3 (emphasis added); *see also* col. 12:34–35.

Of course, Dessinger does not teach that it would be useful to constrict the nasal passages; such an effect would be directly contrary to the goal of the therapy for concha hyperplasia, which is to enlarge passageways and remove obstructions to increase air flow. Indeed, such a constricting effect would be harmful to the patient, who needs to breathe.

Desinger also teaches that an optical waveguide can be used to “make[] the position of the tip of the front cylinder visible to the operator—when dealing with correspondingly *thin tissue*—or in the event of implementing a treatment *just under the skin....*” Desinger, col. 4:55–58 (emphasis added). Consistent with these teachings, Desinger describes an embodiment where an electrode is “in the form of a cannula or needle.” Desinger, col. 8:46. This sharp, tiny electrode is useful for piercing “*terminal* vessels” such as “*finely mottled* varicose veins.” *Id.* at 48–49 (emphasis added). Treatment causes the vessels to be “no longer perceptible *through the skin*” and “the desired *cosmetic effect* is achieved.” *Id.* at 55–56 (emphasis added). The full context for these quotations is provided here:

From Desinger Col. 4 (emphasis added):	From Desinger Col. 8 (emphasis added):
<p>In accordance with a particularly preferred embodiment of the invention the carrier is in the form of a metal tube carrying an externally disposed insulating layer on which the strip-shaped electrodes are disposed. If the metal tube used comprises a metal which can be anodically oxidized in an electrolysis bath, for example therefore titanium or aluminum, then production of the insulating carrier is particularly simple, more specifically if the outside surface of the carrier is electrolytically anodized to form a layer of titanium oxide or aluminum oxide. In this embodiment also it is possible to draw through a hollow duct which passes axially through the carrier and issues at the tip of the front cylinder, an optical waveguide which makes the position of the tip of the front cylinder visible to the operator—when dealing with correspondingly <u>thin tissue</u>—or in the event of implementing a <u>treatment just under the skin</u>, whereby the operator can guide the arrangement in properly targeted fashion. The optical waveguide can be supplied for example with visible laser light. The distal tip of the front cylinder is advantageously either of a conical or a wedge-shaped configuration and the electrodes are applied in the form of thin conducting metal layers to the carrier.</p>	<p>In this embodiment of the invention the front cylinder and the carrier are embodied in the form of an integral metal tube or metal bar whose distal end is pointed. A distal portion of the metal tube or metal bar forms the first electrode. Adjoining same, an insulating layer is applied to the carrier and then a cylindrical metal layer is deposited on the insulating layer in the proximal region of the insulating layer and forms the second cylindrical electrode. The insulating layer can be embodied by a plastic hose or tube to which a metal coating is applied, as the second electrode. The metal carrier with the distal tip represents a bipolar electrode arrangement in the form of a <u>canula or needle</u> and is suitable in particular for therapy in respect of enlarged <u>terminal vessels</u> such as for example <u>finely mottled varicose veins</u>. The electrode arrangement is pierced with its tip in the longitudinal direction into the enlarged vessel. Upon activation of the HF-power the blood and the vessel wall coagulate primarily around the first electrode. When that happens the vessel contracts so as to afford a closure effect with the result that then no further blood can flow into the vessel whereby the <u>vessel is no longer perceptible through the skin</u> and the desired <u>cosmetic effect</u> is achieved.</p>

The quotations given above refer to a cosmetic procedure that deals with the appearance of “terminal vessels,” or tiny veins on the skin surface. This is the only mention in the Desinger reference of veins or vessels. Importantly, there is no teaching in Desinger relating to “intraluminal positioning” or “junctions in a hollow anatomical structure.”

Desinger and Navarro – Claim 1

Claim 1 recites:

1. A method of intraluminally positioning an elongate treatment device proximate to a junction in a hollow anatomical structure comprising veins of a patient, the method comprising the steps of:

introducing the treatment device into the hollow anatomical structure, the treatment device comprising an elongate shaft and an electrically driven energy application device at a working end of the shaft;

identifying the junction where two veins intersect in the hollow anatomical structure by emitting light via a fiber optic device positioned in the hollow anatomical structure;

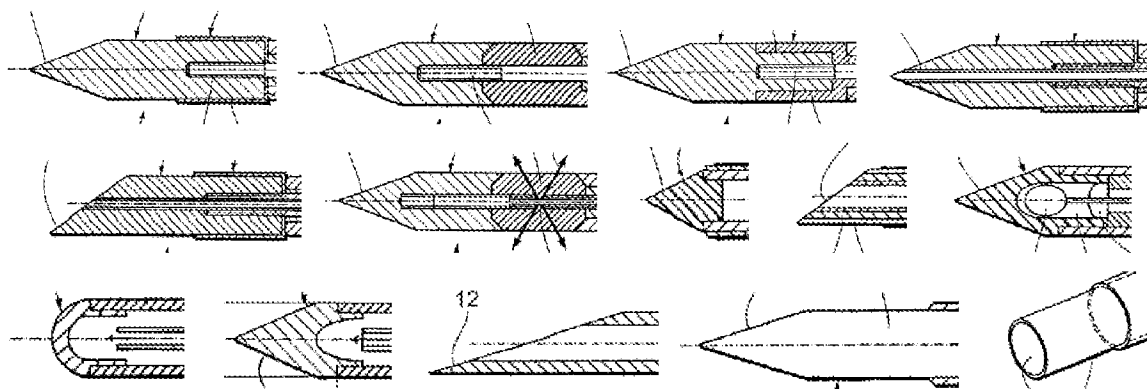
positioning the working end of the treatment device proximate the junction identified in the step of identifying;

applying energy to one of the veins in the hollow anatomical structure proximate the junction via the energy application device so as to reduce the diameter of that vein in the hollow anatomical structure.

Applicants concur with the Office Action's acknowledgment that Desinger does not anticipate Claim 1. The Office Action also asserts that "Desinger teaches treatment of enlarged vessels such as varicose veins *and would obviously require treatment of the saphenofemoral junction.*" Office Action, p. 4 (emphasis added). However, as explained above, Desinger teaches probes optimized for treatment of regions that are externally accessible such as nasal concha. The only teaching in Desinger relating to veins refers explicitly to treatment "just under the skin" Desinger, col. 4:58. Indeed, the treatment described is for a "cosmetic effect" to make "finely mottled" veins no longer be visible "through the skin." See Desinger, col. 4:48-56. This cosmetic process, performed with a tiny needle electrode, is completely different from, and incompatible with, treatment near the saphenofemoral junction, where two large veins come together deep in the leg. For at least these reasons, Desinger not only fails to anticipate the method of claim 1 (as acknowledged in the Office Action), but the assertion of obviousness quoted above from the Office Action is incorrect.

Moreover, a person of ordinary skill in the art would not have combined Desinger with Navarro, and accordingly could not have achieved predictable results (see M.P.E.P. § 2141), for at least the following reasons:

Desinger teaches devices configured specifically for use in "*thin-walled* bodies," which allow a doctor performing a treatment to "always *see[] directly* with his own eyes that location at which coagulation is taking place." Desinger, col. 3:67-4:3 (emphasis added); *see also* col. 12:34-35. Indeed, the sole reference to veins in Desinger states that they are just under the skin and therefore susceptible to "cosmetic" treatment. See Desinger col 8:55-56. Thus, there would be significant technical difficulties in combining Desinger with Navarro. For example, Desinger teaches a variety of special rigid tips, generally formed from metal (see Desinger, col. 11:58-61).



Desinger, Figs. 1–29. This underscores the teachings of Desinger, which focus on surface, and nasal treatments—those that are more easily accessible. In contrast, Navarro teaches insertion of a device relatively deep into a leg, as illustrated here:

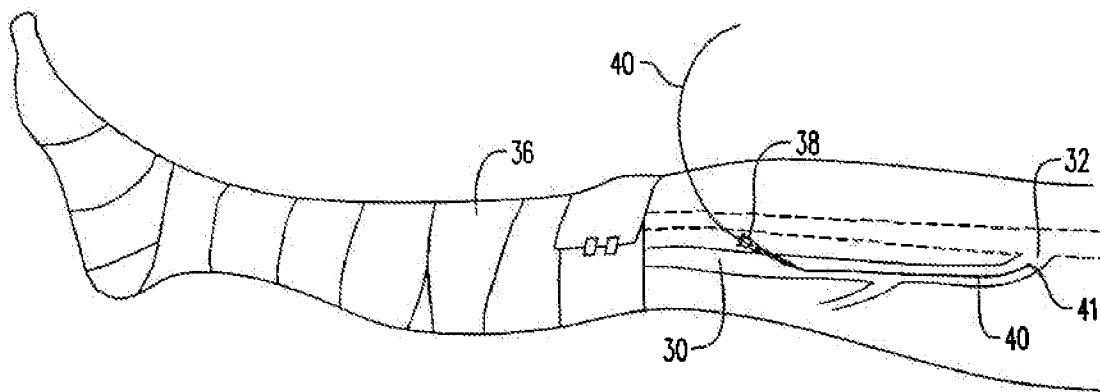


FIG. 4A

Navarro, Fig. 4A. Not only does Navarro teach insertion and treatment far from the surface of the leg, it also teaches treatment of a relatively long portion of a large vein—one that could not be described as “finely mottled,” since that phrase refers to multiple tiny surface veins.

Neither Desinger nor Navarro teaches how these devices or concepts can or should be combined, and indeed the Office Action does not provide either a rationale or a technical description for how such a combination can be made. Moreover, a combination of Desinger and Navarro would likely be inoperable because—unlike Navarro’s simple and flexible fiber optic line 40—the larger, rigid, complicated, and mostly sharp structures of the Desinger electrodes would not be easily threaded through Navarro’s angiocatheter 38 in the first place, let alone threaded deep into a single sub-surface vein. Not only does Navarro teach that “a rounded tip 41 is preferred” because it “decreases the risk of perforation of the vein,” but Navarro also teaches that the “[t]ip 41 preferably has an outer diameter of about 200 microns to about 600 microns in diameter.” Navarro, col. 4:59–65. This tiny tip on a very thin fiber optic line is incompatible with the multi-part, rigid metal tip structures of Desinger. Thus, a combination of Desinger and Navarro would not only be inoperable, it would also frustrate the purpose of Navarro to access and treat a relatively deep location in the body, distant from the access site.

Importantly, Navarro actually criticizes other modes of treatment. In particular, Navarro teaches away from use of electricity to treat varicose veins, stating that “use of electricity invariably leads to coagulation of blood with the blood vessel, rather than causing fibrosis of the

blood vessel itself.” Navarro, col. 2:1–6. Navarro goes on to specify that “fibrosis of the blood vessel is preferred because veins of a much larger treatment diameter may therefore be treated safely and effectively.” Navarro, col. 2:57–59. This disparagement of the use of electricity demonstrates not only that Navarro does not anticipate Claim 1, but also that it is improper to combine Navarro with Desinger, which says nothing about “fibrosis” but instead teaches “coagulation.” Desinger, col. 4:3. The MPEP states: “It is improper to combine references where the references teach away from their combination.” M.P.E.P. § 2145(X)D2, citing *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

Moreover, “in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)”; M.P.E.P. § 2141.02(I). Navarro teaches the use of lasers to treat varicose veins, which is a competing technology to the use of electricity. Thus, taking the “claimed invention as a whole” it would not have been obvious to use one aspect of one technology (e.g., a fiber optic device) with other aspects of competing technologies (e.g., the electrically driven energy application device of Claim 1). This is especially true in light of Navarro’s teaching away cited above. Moreover, combining these two competing technologies would require purchase of both a medical-grade laser console and an RF generator console, each of which is a very expensive piece of capital equipment. Not only do these technologies compete with each other, but at the time of invention they were not designed to be used together. Thus, such a combination would have been unlikely and inoperable.

Even if the elements of the asserted combination could be made as presented in the Office Action, these elements would not function together in the same way as they function separately. In contrast to the Office Action’s statement on page 5 that it would have been obvious “to use the teaching by Navarro to modify Desinger such that the treatment method is specifically directed to the saphenofemoral junction,” nothing in either reference teaches how the devices and tips of Desinger could somehow be plugged into and operated by Navarro’s simple optical fiber, how this non-functioning hypothetical hybrid device could be forced through an angiocatheter and deep into the saphenous vein, and how this procedure would not harm the patient. Indeed,

making this hypothetical combination would drastically change the function of both references. If Desinger's rigid-tipped probes were modified to be compatible with Navarro's method, they would need to have a drastically smaller cross-section to fit into the introducer, and they would also have to be made much longer to be threaded deep into the saphenous vein. But these very modifications would make them less likely to contact the vein walls and cause the desired clinical effects discussed in Desinger. Conversely, if the tiny, elongated laser fiber of Navarro was bulked-up to include the rigid tip electrode structure taught by Desinger, it would no longer fit into the introducer.

In light of the deficiencies set forth above, it appears that the only motivation for combining Desinger and Navarro is necessarily the claims and teachings of the present application. This is improper hindsight, because it molds the elements taught in the various cited references into something that will cover the claimed invention, without that alteration being actually present, absent the invention by the Applicants. Indeed, "[o]bviousness can not be established by hindsight combination to produce the claimed invention [I]t is the prior art itself, and not the appellant's achievement, that must establish the obviousness of the combination."³

For at least these reasons, Claim 1 and its dependents are allowable and withdrawal of the rejection is requested.

Desinger and Navarro – Claim 78

Applicants concur with the Office Action's acknowledgment that Desinger does not anticipate Claim 78 or its dependents. Claim 78 is provided here for reference:

78. *A method of positioning a device for intraluminal application of therapeutic energy to a target portion of a hollow anatomical structure, the method comprising:*

emitting light from a light source within a hollow anatomical structure having first and second lumina;

monitoring the light from outside the hollow anatomical structure to determine information about the location of a junction between a target portion and a nontarget portion of the hollow anatomical structure;

³ *In re Dance*, 160 F.3d 1339 (Fed. Cir. 1998).

introducing a catheter having a working end into the first lumen of the hollow anatomical structure, the catheter having a therapeutic energy device at the working end, the therapeutic energy device being distinct from the light source;

using the information to position the therapeutic energy device in the target portion in the first lumen near the junction; and

applying energy from the therapeutic energy device to the target portion in the first lumen of the hollow anatomical structure, thereby shrinking the target portion of the hollow anatomical structure.

The Office Action lumps independent Claim 78 with Claim 1 in its rejections. Indeed Claim 78 is patentable for many of the reasons provided above with respect to Claim 1, including for the reasons that the Desinger/Navarro combination is improper because of the teachings away, frustration of purpose, and technological difficulties discussed above. Moreover, Desinger does not teach “emitting light from a light source within a hollow anatomical structure having first and second lumina” as claimed. Desinger’s “finely mottled,” “terminal” vessels located “just under the skin” are compatible with “cosmetic” treatment (see Desinger passages quoted above), but these tiny structures are not compatible with “determin[ing] information about the location of a junction between a target portion and a nontarget portion of the hollow anatomical structure,” as claimed. Similarly, Desinger does not teach “position[ing] the therapeutic energy device in the target portion in the first lumen near the junction” or applying energy “to the target portion in the first lumen of the hollow anatomical structure, thereby shrinking the target portion of the hollow anatomical structure.” Thus, even if improperly combined, the cited references do not teach all the claimed elements. Accordingly, and because Desinger cannot be combined with Navarro, absent improper hindsight motivation and analysis, the current rejection of Claim 78 should be withdrawn.

Desinger and Navarro – Claim 89

Applicants concur with the Office Action’s acknowledgment that Desinger does not anticipate Claim 89 or its dependents. Claim 89 is provided here for reference:

89. A method of positioning a device for application of therapeutic energy to a target portion of a system of two blood vessels, the method comprising:

emitting visual feedback light from a visual feedback device positioned within a the system of two blood vessels;

monitoring the visual feedback light from outside the system of two blood vessels to determine information about the location of a junction between a target portion and a non-target portion of the system of two blood vessels;

introducing, into the first vessel, a catheter having a therapeutic energy device at the catheter's working end, the therapeutic energy device distinct from the visual feedback device;

using the information to position the therapeutic energy device near the junction and prevent the therapeutic energy device from extending into the non-target portion; and

shrinking the target portion of the system of two blood vessels by applying energy from the therapeutic energy device to the target portion.

The Office Action lumps independent Claim 89 with Claims 1 and 78 in its rejections. Indeed Claim 89 is patentable for many of the reasons provided above with respect to Claims 1 and 78, including for the reasons that the Desinger/Navarro combination is improper because of the teachings away, frustration of purpose, and technological difficulties discussed above. Moreover, Desinger does not teach “a method of positioning a device for application of therapeutic energy to a target portion of a system of two blood vessels.” Desinger’s “finely mottled,” “terminal” vessels located “just under the skin” are compatible with “cosmetic” treatment (see Desinger passages quoted above), but these tiny structures are not compatible with monitoring visual feedback “to determine information about the location of a junction between a target portion and a non-target portion of the system of two blood vessels.” Similarly, for at least the reason that Desinger’s vessels are “finely mottled” surface structures, Desinger does not teach “using the information to position the therapeutic energy device near the junction and prevent the therapeutic energy device from extending into the non-target portion” or “shrinking the target portion of the system of two blood vessels by applying energy from the therapeutic energy device to the target portion.” Thus, even if improperly combined, the cited references do not teach all the claimed elements. Accordingly, and because Desinger cannot be combined with Navarro, absent improper hindsight motivation and analysis, the current rejection of Claim 89 should be withdrawn.

Desinger, Navarro, and Makower – Claims 5–7, 16, and 21

Applicants concur with the Office Action's acknowledgment that even when they are taken together, Desinger and Navarro do not render obvious Claims 5–7, 16, and 21:

5. *The method of claim 3 further including the step of measuring the length of the fiber optic device introduced into the patient until the attribute of the light changes.*

6. *The method of claim 5 further including the step of removing the fiber optic device after the step of measuring.*

7. *The method of claim 5 wherein the step of positioning further includes the step of inserting the treatment device for the same length as measured in the step of measuring the length of the fiber optic device.*

16. *The method of claim 1 wherein introducing said treatment device comprises introducing said treatment device over a guidewire with a hook shaped tip located at the distal end of a guide wire, and the hook shaped tip is adaptable to engage the junction of the hollow anatomical structure while the treatment device travels over the guidewire to the junction.*

21. *The method of claim 1 wherein the step of introducing the treatment device further includes the step of introducing the treatment device over a guide wire.*

The Office Action relies upon not only Desinger and Navarro, but also on Makower in its rejections of Claims 5–7, 16, and 21. Because all of these claims ultimately depend from Claim 1, they are patentable for the same reasons provide above with respect to Claim 1, including for the reason that the Desinger/Navarro combination is improper.

Claims 16 and 21 are also patentable for at least the additional reason that Makower's teaching of a guidewire is incompatible with the teachings of either Desinger or Navarro. Not only is a guidewire never mentioned in either reference, but neither has a hollow portion that could accept a guidewire. Desinger teaches an optical fiber in the center of its catheters, which would not allow room for a guidewire. Replacing the optical fiber would frustrate the purpose of Desinger. Navarro teaches a simple, tiny optical fiber, having no structure that could accept a guidewire. Indeed inserting a guidewire into the small-diameter fiber would interfere with light propagation or require other drastic modifications. Accordingly, the proposed combination would involve too many technological difficulties; the transformation required may render the simple optical figure inoperable for its intended purpose.

For at least these reasons, Claims 5-7, 16, and 21 are allowable and withdrawal of the rejections is requested.

Desinger, Navarro, and Makower – Claim 50

Applicants concur with the Office Action's acknowledgment that even when they are taken together, Desinger and Navarro do not render obvious Claim 50 or its dependents. Claim 50 is provided here for reference:

50. A method of positioning a catheter within a hollow anatomical structure, the method comprising the steps of:

introducing a guide wire having a hook-shaped tip into the hollow anatomical structure;

hooking the hook-shaped tip of the guide wire to an ostium of a junction within the hollow anatomical structure;

introducing a catheter having a working end into the hollow anatomical structure over the guide wire;

positioning the working end of the catheter proximate the junction identified in the step of hooking; and

applying energy to the hollow anatomical structure at the treatment site via an energy application device at the working end of the catheter to heat but not cut the hollow anatomical structure until the hollow anatomical structure durably assumes a smaller size such that the reduced diameter of the hollow anatomical structure effectively ligates the hollow anatomical structure.

The Office Action characterizes Desinger by stating: “[t]he treatment device is introduced at the treatment site over the optical waveguide or fiber optic device,” and it cites the following passage from column 12 of Desinger to support that assertion:

25 FIG. 5 shows a further embodiment of the invention which substantially corresponds to the embodiment of FIG. 4, but in which the front cylinder 10 has a wedge-shaped tip 12 at its distal end. Once again, extending through the inner
30 conductor 40 and adjoining same also through the front cylinder 10 is a central hollow duct through which an optical waveguide 60 passes with its sheath 62 and the core 64 to the distal tip 12 and optically indicates the position of the distal tip 12 in the tissue for the user of the electrode arrangement,
35 body.

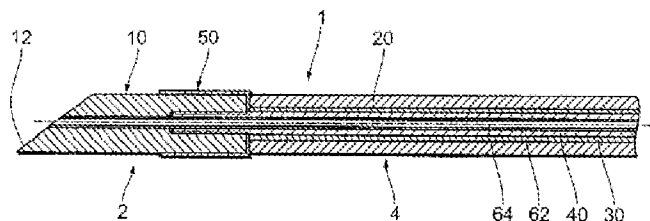


Fig. 5

However, nothing in the above passage supports the proposition for which it is cited. Indeed, nothing in Desinger teaches or suggests that its probes are susceptible of being introduced “over

a guide wire,” as claimed. The devices disclosed in Desinger are configured with active tips for cosmetic, surface use (col. 8:47–56); for use in “thin-walled parts of the body,” (see col. 3:35; col. 5:37; col. 12:34–35); for introduction through existing “body openings” (col. 5:5)—for example, into the nasal concha (col. 3:36, 41–43; col. 4:24); and in treating “edge tumors” (col. 8:7; col. 15:43–44 (emphasis added)).

The Office Action states that “Desinger ... would obviously require treatment of the saphenofemoral junction.” Office Action, p. 8. This statement is incorrect for the same reasons provided above with respect to a similar statement made in the Office Action’s discussion of Claim 1.

The Office Action states that “Desinger and Navarro teach the use of distal tips or rounded tips to engage the junction....” Office Action, p. 9. This is incorrect because, as discussed above, Desinger provides no teaching or suggestion relating to junctions, and also for the reason that Navarro does not teach “engaging” a junction. Indeed, Desinger and Navarro are themselves an improper combination.

Makower’s teaching of a guidewire is incompatible with the teachings of either Desinger or Navarro. Not only is a guidewire never mentioned in either Desinger or Navarro, but neither is configured to accept a guidewire. Desinger teaches an optical fiber in the center of its catheters, which would not allow room for a guidewire. Desinger, Fig. 5.

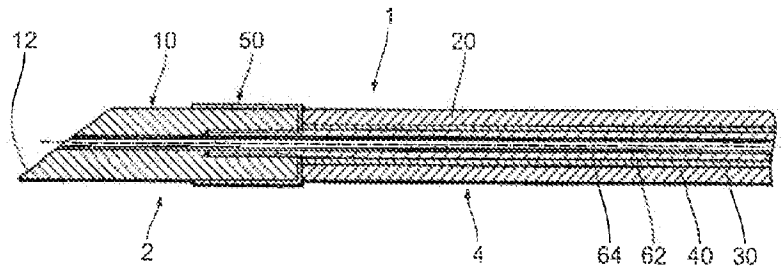
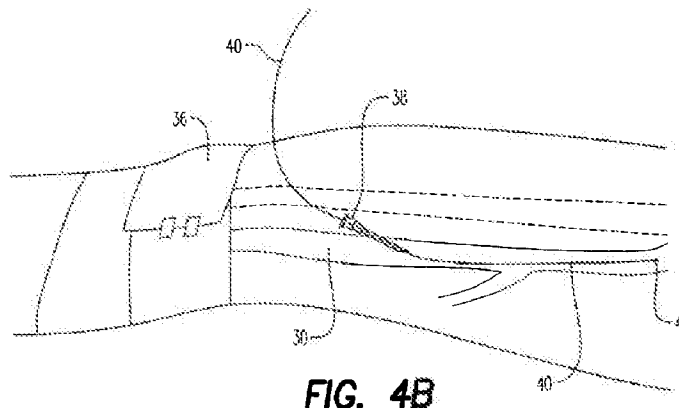


Fig. 5

Replacing the optical fiber would frustrate the purpose of the Desinger embodiment cited by the Examiner.

Navarro teaches a simple, tiny optical fiber, having no structure that could accept a guidewire. See Navarro, Fig. 4B.



Indeed inserting a guidewire into the small-diameter fiber would interfere with light propagation or require other drastic modifications. Accordingly, the proposed combination would involve too many technological difficulties; the transformation required may render the simple optical figure inoperable for its purpose.

For at least these reasons, Claim 50 and its dependents are allowable and withdrawal of the rejection is requested.

Dependent Claims

Dependent claims remain pending but rejected over the prior art. Applicants respectfully submit that the pending dependent claims are also in condition for allowance for at least the reason that they depend from allowable base claims, as well as for their recitation of further novel and non-obvious features and/or combinations of features.

Desinger Is Not Prior Art To The Pending Application

Although the arguments above demonstrate the substantive patentability of the claims and the impropriety of the asserted references, the arguments in the Office Action also do not apply because, pursuant to M.P.E.P. § 706.02(f) and § 2136, Desinger is not prior art to the present application. Desinger is a U.S. patent that was based on an international application filed prior to November 29, 2000, the effective date of the relevant provisions in the American Inventors Protection Act of 1999 (AIPA). See M.P.E.P. § 2136. Accordingly, the condition in M.P.E.P. § 706.02(f)I(C)(1)(a) is not met, and M.P.E.P. § 706.02(f)I(C)(3) applies. Because Desinger is a U.S. patent, Desinger's effective date as a reference under 35 U.S.C. § 102(e) is the date of completion of the requirements of 35 U.S.C. 371(c)(1), (2), and (4), which in this case is July 30,

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Filing Date: April 3, 2001

2001. But the present application is a continuation of and claims priority to U.S. Application No. 09/825,741, which was filed on August 14, 2000, almost a full year earlier. Thus, Desinger is not a proper 102(e) reference.

For at least this additional reason, the present rejections should be withdrawn and a notice of allowance issued.

No Disclaimers or Disavowels

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, no acquiescence, disclaimer or estoppel is intended or implied thereby. Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to expedite prosecution of this application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application. Applicants also reserve the right to contest whether one or more of the cited references are in fact prior art to the present application.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance. Furthermore, any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used, unless otherwise noted. Any remarks referring to only a portion of a claim should not be understood to base patentability on that portion alone or to imply that the limitation discussed is essential or critical. Rather, patentability rests on each claim taken as a whole; it is the combination of features or acts recited in a claim that distinguishes it over the art of record.

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Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Applicants may not have presented all arguments concerning how the applied references do not render the claims anticipated or obvious, or how the references cannot be properly combined or modified in view of their deficiencies. Accordingly, Applicants reserve the right to later present additional arguments of patentability—for example, to later contest whether a proper motivation and suggestion exists to combine or modify any of the applied references.

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is requested.

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee:

Serial Number	Title	Filed
11/491065	THERMAL THERAPEUTIC CATHETER WITH LOCATION DETECTION ENHANCEMENT	July 21, 2006
11/732771	PHLEBECTOMY ILLUMINATION DEVICE AND METHODS	April 4, 2007

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Philip M. Nelson at (949) 721-6383 to resolve such issue(s) promptly.

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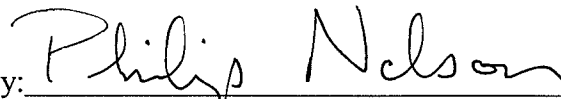
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 24, 2010

By:



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